



Montana Board of Oil and Gas Conservation
Attention: Jim Halvorson
2535 St. Johns Avenue
Billings, MT 59102

February 9, 2018

Re: Hydraulic fracturing chemical disclosure rulemaking

Dear Members of the Montana Board of Oil and Gas Conservation,

Northern Plains Resource Council (“Northern Plains”) submits the following comments on the Board of Oil & Gas Conservation’s (“Board’s”) upcoming rulemaking on hydraulic fracturing chemical disclosure. The Board is proposing to amend ARM 36.22.608, 36.22.1015, and 36.22.1016 per the direction of the 65th Montana Legislature and to comply with the requirements of MCA § 82-10-601, 82-10-603, and 82-10-604, all newly revised in 2017.

Northern Plains is a grassroots conservation and family agriculture organization based in Billings, Montana. Northern Plains organizes Montana citizens to protect our water quality, family farms and ranches, and unique quality of life. Northern Plains is made up of dues-paying members who vote for our leaders or run for leadership positions themselves. It is our member leaders who govern the organization, and who represent it publicly.

Northern Plains formed in 1972 over the issue of coal strip mining and its impacts on ranchers and private surface owners, as well as the environmental and social impacts of mining and transporting coal. Our work expanded to include oil and gas development in the late 1990s, when large-scale coal bed methane was proposed for Montana. Many of our members own farms and ranches in coal bed methane country and in oil and gas-producing areas more broadly. Our members’ livelihoods depend entirely on clean air and water, native soils and vegetation, and intact working landscapes.

Since the coal bed methane boom, Northern Plains has taken the lead in ensuring that oil and gas is developed responsibly in Montana. Our goals today remain the same as they were then: to ensure the development of Montana’s resources does not compromise our water quality, the viability of our livelihoods, and the health of our communities. On behalf of our members, Northern Plains has an interest in ensuring the Board fully protects and prevents harm to our land, air, water, and communities even as its obligations to mineral owners and the state are fulfilled.

Northern Plains commends the Board’s work toward initiating rulemaking on hydraulic fracturing chemical disclosure, and reaffirms our support of revising ARM 36.22.608, 36.22.1015, and 36.22.1016 to include pre-stimulation disclosure of chemicals, and to place limits on the trade secret exemption. As noted in prior comments before the Board, Northern

Plains believes in government transparency and the rights of landowners and citizens to access information that impacts them. As a result, Northern Plains is keenly interested in seeing improved transparency and accessibility of information on the chemicals used during hydraulic fracturing.

In conjunction with Earthjustice and the Montana Petroleum Association, Northern Plains requests the Board amend ARM 36.22.608 to require that chemical disclosure include individual chemical compound names for hydraulic fracturing fluid ingredients and their associated CAS numbers. Specifically, we request the following language be incorporated into ARM 36.22.608 as item (3)(c):

(c) the chemical ingredients of the well stimulation fluid and the proposed rate or concentration for each ingredient as described in MCA § 82-10-603(2)(a)-(b);

The proposed language was discussed in advance of the rulemaking and is mutually supported by the entities listed above.

In addition, Northern Plains requests the Board require chemical disclosure at least 45 days in advance of all chemical well stimulation activities, including for wildcat wells. Chemical disclosure without adequate advance notice (i.e., notice that allows enough time for baseline water quality testing to occur) provides citizens and landowners with no benefit, and from the perspective of the landowner, is functionally the same as disclosing after hydraulic fracturing has happened. In other words, a chemical disclosure rule that does not include a sufficient timing requirement for *when* that disclosure must be made renders the rule of little practical use.

By contrast, advance disclosure of 45 days would provide the opportunity to test for the chemicals disclosed (or for parameters that serve as flags or indicators for those chemicals) in a baseline water test. In doing so, landowners establish a sound basis for recourse in cases of legitimate and provable water contamination. Targeted baseline water testing of this kind should be a boon to the vast majority of industry operators who operate without incident, as it would shield them from unfounded claims of water contamination by eliminating any guesswork from pre-fracking water quality conditions.

Finally, Northern Plains requests the Board create a separate page on its website that is easily searchable by operator name, well name, and well location to house chemical disclosure information, including materials supporting trade secret requests and determinations on those requests. As Board members are well aware, parts of eastern Montana and the hi-line are five hours or more from Billings, and the Board's office is only open on weekdays. If data only exists in physical form at the Board's office in Billings, the vast majority of landowners and citizens who have oil and gas development on or around their property or home will remain unable (or face significant barriers) to access information that impacts them without a time-consuming and expensive trip, and, in many cases, time away from work.

Northern Plains recognizes the Board's continued attention to issues of transparency and data accessibility, and appreciates the Board's past and current efforts to ensure development occurs in such a way that poses the least burden and impacts to the land, air, water, and citizens

of Montana. Revisions to ARM 36.22.608, 36.22.1015, and 36.22.1016 to require pre-hydraulic fracturing chemical disclosure, limit trade secret exemptions, set an appropriate timeline for advance disclosure, and make data available online would substantially improve the ability of landowners living in close proximity to oil and gas development to make informed decisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Hanson". The signature is fluid and cursive, with the first name "Deborah" and last name "Hanson" clearly distinguishable.

Deborah Hanson

Chair, Northern Plains Resource Council Oil and Gas Task Force
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